

DETROIT SERVICE LEARNING ACADEMY

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October 7, 2016

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554
ELECTRONICALLY FILED VIA ECFS

Re **CC Docket No. 02-6**

Petition for Waiver of FCC Form 486 filing deadline

Form 471 Application No. 1051826

FRN 2873360

Applicant: Detroit Service Learning Academy, BEN 208680

Dear Secretary Dortch,

With this letter Detroit Service Learning Academy ("DSLA") requests a waiver of the FCC Form 486 filing deadline in the case of the captioned funding request under the Schools and Libraries Universal Service Support Mechanism ("E-Rate").

DSLA also requests a waiver of the appeal or waiver filing deadline¹, if it applies to this filing, since the deadline would have been missed by only a few days.

Background

DSLA is a unique educational institution which integrates meaningful community service with instruction and reflection to enrich the learning experience, teach civic responsibility, and strengthen communities. As members of the community, our students have the responsibility to live the core values of wisdom, justice, integrity, love, compassion, respect, and courage.

Due to confusion about which funded services were actually going to be used, DSLA's original FCC Form 486 for this funding year did not list the captioned funding request. The omission was realized only after the end of the funding year, at which time DSLA filed an FCC Form 486 listing the missing funding request.

On 8/3/2016 USAC notified DSLA that most funding for the funding request would be lost, due to the late FCC Form 486 filing. Instant petition is filed only four days after the

¹ See 47 CFR §54.720

calculated appeal or waiver filing deadline. Since the relief sought by this petition may involve the grant of a waiver of the Commission's filing deadline rule (at §54.719(a)), this request for review must be initially filed with the Commission.

Analysis

Due to factors not reasonably within its control, DSLA was unable to fully comply with the requirement to file Form 486 by the normal 120 day limit after the latter of the service start date and the Funding Commitment Decision Letter date for FRN 2873360. To the best of our knowledge, our E-rate funding application is otherwise in full compliance with all FCC rules and USAC requirements.

In *Alaska Gateway*², the Federal Communication Commission's ("Commission") Wireline Competition Bureau ("Bureau") found that where special circumstances are present and a Form 486 was not filed on a timely basis, good cause exists to grant a waiver of the filing deadline and direct USAC to process the applicant's Form 472 reimbursement application without a postponement of the funding start date. The Bureau noted that in these cases the applicants missed a procedural deadline and did not violate a substantive rule. The Bureau has consistently applied the *Alaska Gateway* standard in subsequent orders granting waivers of the Form 486 filing deadline, including *State of Arkansas Department of Information Systems*³, *Alcona County Library*⁴, *Children of Peace School*⁵, *Academy St. Benedict – Stewart*⁶, *Bancroft Neurohealth*⁷, and *Archdiocese of Chicago School*⁸.

The cited orders were consistent with *Bishop Perry*⁹, where the Commission found that under certain circumstances, rigid adherence to certain E-rate rules and requirements that are "procedural" in nature does not promote the goals of section 254 of the Telecommunications Act of 1996 – ensuring access to discounted telecommunications and information services to schools and libraries – and therefore does not serve the public interest.

The Bureau further noted in *Alaska Gateway* and in *Alcona County Library* that denying the petitioners' requests would create undue hardship and prevent these otherwise eligible schools and libraries from receiving funding that they need to bring advanced telecommunications and information services to their students and patrons. That would certainly be the case if DSLA were to be denied the opportunity to request reimbursement for its eligible expenses. The consequences of a denial of funding would

² *Alaska Gateway School District et al*, 21 FCC Rcd 10182 (DA 06-1871)

³ *State of Arkansas Department of Information Systems et al*, 23 FCC Rcd 9373 (DA 08-1418)

⁴ *Alcona County Library et al*, 23 FCC Rcd 15500 (DA 08-2379)

⁵ *Children of Peace School et al*, 25 FCC Rcd 5492 (DA 10-885)

⁶ *Academy St. Benedict – Stewart et al*, 25 FCC Rcd 17309 (DA 10-2352)

⁷ *Bancroft Neurohealth et al*, 26 FCC Rcd 10948 (DA 11-1239)

⁸ *Archdiocese of Chicago School* (DA 12-28)

⁹ *Bishop Perry Middle School et al*, 21 FCC Rcd 5316 (FCC 06-54)

not further the purposes of section 254(h) of the Telecommunications Act of 1996 or serve the public interest.

Regarding the matter of the timeliness of the filing of instant petition, in its analysis in *Alaska Gateway*¹⁰ of the 128 petitions under consideration (which included petitions framed as requests for *waivers* of the Form 486 filing deadline) the Bureau cited its authority to waive any provision of its own rules (47 CFR §1.3). Although strictly speaking the Form 486 filing deadline is a USAC Schools and Libraries Division procedural requirement (rather than an FCC rule), the Bureau implicitly (and correctly) concluded that its authority to waive an FCC rule also provided authority to waive a USAC requirement for which USAC's authority is derived from an FCC rule¹¹. (One might consider the Bureau's grant of a waiver of a USAC requirement to actually be a limited *waiver of the Commission rules which grant USAC authority* to make and enforce a specific E-Rate procedural requirement.)

Instant petition is a request for a waiver and is not an appeal of any particular USAC SLD decision. In particular, DSLA has not yet requested reimbursement (on FCC Form 472) from USAC SLD for expenses incurred earlier than 120 days before the filing of Form 486 for any particular funding request, so SLD has not had the opportunity to issue a decision denying reimbursement. Therefore, the appeal filing deadline provision of 47 CFR §54.720 should not apply.

Nevertheless, if the Bureau finds that any decision already made by USAC has tolled the beginning of a 60-day appeal period which has already passed, DSLA respectfully requests that the Bureau waive the provisions of 47 CFR §54.720 to the extent necessary to consider and grant instant petition. Such a waiver would be consistent with precedent, as the Bureau has granted waivers of §54.720 (as well as waivers of the Form 486 filing deadline) to petitioners in *Academy of St. Benedict – Stewart, Bancroft Neurohealth*, and *Archdiocese of Chicago School*.

¹⁰ *Alaska Gateway School District et al*, paragraph 5

¹¹ The responsibilities of the Universal Service Fund Administrator are enumerated at 47 CFR 54 Subpart H

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Request for Relief

For the reasons stated in this letter, DSLA respectfully requests that the Bureau grant a waiver of the FCC Form 486 filing deadline for the cited E-rate funding applications. We also ask that the Bureau, consistent with precedent, direct USAC to waive any of its subsequent deadlines related to the late-filed FCC Form 486¹².

In the event that the Bureau finds that the provisions of 47 CFR §54.720 apply to this petition, DSLA respectfully requests that the Bureau grant a waiver of this rule to the extent necessary to consider and grant this petition.

Finally, on behalf of our current students, DSLA respectfully requests that the Bureau expedite consideration of this petition. Timely action by the Bureau would support the goals of the E-Rate program, especially with respect to our current students whose educational success would be compromised by a delay in our receipt of our committed E-Rate reimbursement funds.

DETROIT SERVICE LEARNING ACADEMY

Lori O'Leary

Lori O'Leary
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¹² E.g., see *Children of Peace School et al*, footnote 24